

Message Text

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ORIGIN OPIC-12

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DRAFTED BY CHUNT, OPIC/DGC

APPROVED BY EB/IFD/OIA MKENNEDY

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EA/TB:JAKLEMSTINE

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R 311332Z MAY 74

FM SECSTATE WASHDC

TO AMEMBASSY BANGKOK

UNCLAS STATE 114193

E.O. 11652: NA

TAGS: E/FIN

SUBJECT: CALABRIAN -- LITIGATION

1. FOLLOWING COMMENTS ARE OFFERED ON WIPHAT DRAFT CLOSING
BRIEF PER MAY 23 REQUEST FROM REGIONAL LEGAL ADVISOR TO
HUNT.

2. THE BRIEF IS FIRST CLASS. ESPECIALLY IMPRESSIVE IS
PARAGRAPH 8 PRESENTATION OF THE VARIOUS FINANCING DOCUMENTS
AS PART OF AN INTERLOCKING, RECIPROCALLY REINFORCING FIN-
ANCING AND SECURITY ARRANGEMENT.

3. SHOULD NOT REFERENCE TO "EXHIBIT NO. 14" IN 7TH LINE
FROM BOTTOM OF PAGE 8 READ "PROVISION NO. 14(B) OF EXHIBIT
CHAW. 15"?

4. SUGGEST WIPHAT GIVE FURTHER CONSIDERATION TO PENULTIMATE
PARAGRAPH 14. INTRODUCING ISSUE OF LIKELY UNENFORCEABILITY
OF JUDGEMENT DUE TO FAILURE TO JOIN CALTHAI AS DEFENDANT
AND FACT THAT INDIVIDUAL DIRECTOR DEFENDANTS ARE BEYOND
REACH OF THE COURT TENDS TO SHIFT ATTENTION AT CONCLUSION
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OF BRIEF FROM THE ABLE PRESENTATION OF SUBSTANTIVE DEFENSES.

5. SUGGEST LINE6, PAGE 7 BE REPHRASED TO READ "AID ATTEMPTED TO EXERCISE".

6. QUESTION WHETHER PARAGRAPH 5, PAGE 7 IS ACCURATE IN STATING COMPANY "COMMITTED A DEFAULT" BY NOT REPAYING THE \$1 MILLION BEFORE OCTOBER 1. WASN'T THIS JUST A PRECONDITION TO AID RIGHT TO SELL, RATHER THAN A FIXED OBLIGATION OF COMPANY?

7. ACCORDING TO ENGLISH LANGUAGE VERSION OF CALTHAI ARTICLES OF ASSOCIATION (PARA 3 RE SHARES AND SHAREHOLDERS), DIRECTOR'S RIGHT OF REFUSAL TO TRANSFER STOCK LIMITED TO QUOTE A PERSON WHOM THEY SHALL NOT APPROVE OF BEING A MEMBER OF THE COMPANY UNQUOTE. POINT 3, PAGE 6 OF BRIEF MIGHT NOTE THIS ADDITIONALLY. INTENT OF THE PARAGRAPH RELATED TO STRANGERS TO THE COMPANY. CHEMICAL BANK AND THUS A.I.D. WERE CONTEMPLATED AS POTENTIAL SHAREHOLDERS FROM THE BEGINNING OF THE PROJECT AND ACCEPTABLE TO ALL CONCERNED. RIGHT OF REFUSAL SHOULD THUS NOT BE APPLICABLE FOR THIS REASON ALONE TO THIS TRANSFER OF STOCK. KISSINGER

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